**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JOSE ANDRES CAZARES, Special Administrator of the Estate of ANDREW CAZARES, Deceased	)	
Plaintiff,	)	Case No. 1:13-cv-05626
v.	)	Honorable District Judge Kendall
JOSEPH FRUGOLI, JOHN R. MORAN, PRIMERO, INC., an Illinois Corporation, METROPOLITAN BANK LAND TRUST 1463, and CITY OF CHICAGO, municipal corporation	)	Honorable Magistrate Judge Martin
Defendants.	)	

FAUSTO T. MANZERA, as Special Administrator of the Estate of Fausto A. Manzera, deceased, and Maria Valez, as co-special administrator of the Estate of Fausto A. Manzera, deceased.	)	Case No. 1:13-cv-05626
Plaintiff,	)	Honorable District Judge Kendall
v.	)	Honorable Magistrate Judge Martin
JOSEPH FRUGOLI, JOHN R. MORAN, PRIMERO, INC., an Illinois Corporation, METROPOLITAN BANK LAND TRUST 1463, and CITY OF CHICAGO, municipal corporation	)	
Defendants.		

CITY OF CHICAGO'S MOTION TO BAR RONALD FORGUE

Defendant, City of Chicago ("City"), by and through its undersigned attorneys, respectfully moves this Court to bar Ronald Forgue as a witness in this case, and in support thereof, states as follows:

FACTUAL INTRODUCTION

Plaintiffs filed this action against the City, among others, after a car accident on April 9, 2009 in which their decedents were struck by a car driven by an off-duty police officer, Joseph Frugoli ("Frugoli"). The specific allegations against the City are that "Frugoli's intoxicated operation of a vehicle and subsequent automobile crash with the decedents was caused by the City's *de facto* policies." (See this Court's Memorandum Opinion and Order, Dkt. No. 52, p. 6).

Ronald Forgue ("Forgue") is a former employee of the Chicago Police Department who filed a complaint in this district against various individual defendants and the City on September 23, 2015, alleging retaliation, defamation and race discrimination. (*Forgue v. City of Chicago, et. al.*, Case No. 15-cv-8385 (N.D. Ill. 2015) ("Forgue's Case")). None of the individual defendants in Forgue's Case are named in the case at bar.

Despite there being no allegation in the complaint regarding retaliation for reporting an officer being intoxicated by alcohol, and, based solely on a review of Forgue's September 23, 2015 complaint, plaintiff herein sought leave to depose Forgue and specifically argued "Forgue's allegations have direct bearing on this case, the triviality of the requirement to report wrongdoing in the Chicago Police, and ultimately, the connection to off-duty officers being intoxicated." (Plaintiff's Motion for Leave to Depose Forgue, Dkt. No. 195, p. 6). Moreover, plaintiff argued [he] "expects Forgue's allegations to tie directly into allegations of alcohol usage while off-duty" and "the ties to the *instant* case are glaring: if officers who report the intoxication of other officers should expect systematic and widespread retribution, their character to be defamed, and their families to be harassed; then these officers are incentivized not to report the intoxication" and "it is in this context that [plaintiff] seeks to depose Lt. Forgue." Dkt. No. 195, p. 7. Furthermore, in briefing, plaintiff stated a "good-faith belief that Forgue will testify that he reported officers routinely becoming intoxicated, in violation of police policy, and that this was the incident which initially gave rise to the retaliation." (Plaintiff's Reply in Support of Motion for Leave to Depose Forgue, Dkt. No. 200, p,. 3).

The City objected to Forgue's deposition as it appeared to be irrelevant to the issues in this case and further that it would essentially lead to nothing more than investigation and discovery of Forgue's Case (and eventually a trial within a trial of Forgue's Case in this case). This Court granted plaintiff's motion for leave to depose Forgue on November 12, 2015 (Dkt. No. 205). As such, Forgue's deposition was taken and completed on December 2, 2015. Pertinent portions of Forgue's deposition testimony are attached hereto as Exhibit A and incorporated herein by reference.

At his deposition, Forgue testified he was employed in various capacities for the Chicago Police Department from 1986-2015. (Exhibit A, pp. 12-15). He testified his lawsuit (Forgue's Case) was filed because he believes he was retaliated against because of reports he made about other officers' misconduct. (Exhibit A, p. 25). Specifically, he described a situation where he reported that white officers were spitting tobacco in people's homes and his supervisor took no formal action. (Exhibit A, pp. 31-32). He also testified regarding his reporting of a situation wherein he alleged Chicago Police Officers unlawfully detained his son for a matter of two hours and of another alleged situation in which an image of him was allegedly circulated within the Chicago Police with the words "sex offender" written on it. (Exhibit A, pp. 33-35). He testified his reporting of these incidents resulted in retaliation against him. (Exhibit A, p. 36).

There was very little questioning or testimony at Forgue's deposition regarding off-duty officers being intoxicated or officers incentivized not to report the intoxication, despite that being previously argued by plaintiff as the "context" for the deposition. In fact, the only testimony in that regard was Forgue's testimony that he recalled one time reporting an officer being intoxicated by alcohol in the 1980s. (Exhibit A, pp. 25, 26, 29). However, and most significantly, Forgue testified he could not say he experienced retaliation for reporting that ("I don't know if that could be the exact reason for retaliation."). (Exhibit A, p. 30). Forgue also testified he did not know Mr. Frugoli. (Exhibit A, p. 44).

Plaintiff was allowed some leeway to pursue Forgue's deposition. The lack of relevance of Forgue as a witness in this case has now been confirmed and he should be barred.

ARGUMENT

The test for relevance is whether the evidence "has any tendency to make a fact more or less probable than it would be without the evidence" and the evidence is of consequence in determining the action." (*See Fed. R. Evid. 401*).

Forgue's deposition contradicts plaintiff's previous belief that his deposition would establish a connection to off-duty officers being intoxicated. Nothing in his testimony "ties directly into allegations of alcohol usage while off-duty" nor is there any tie to the instant case. His testimony has no tendency to make a fact more or less probable and it is of no consequence in determining this action. Even if it were somehow relevant (which it is not), any arguable relevance would be far outweighed by a danger of unfair prejudice (a jury hearing about an unrelated claim), confusing the issues and misleading the jury (having to separate Forgue's Case facts), undue delay, wasting time, and needlessly presenting cumulative evidence[1]. (*See Fed. R. Evid. 403*).

[1] Given Forgue's deposition testimony, plaintiff will now inevitably argue almost exclusively that Forgue is relevant to issues related to a "code of silence." Plaintiff has already disclosed numerous witnesses on this issue, including expert witnesses. Forgue has no foundation on that subject and is nothing more than one more witness plaintiff seeks to combine with others who say a code of silence exists. Under that logic, any witness holding an opinion that a code of silence exists within the Chicago Police Department could be a witness in the present case regardless of any nexus, factual or otherwise.

Plaintiff's reason to depose Forgue has been defeated by Forgue's own testimony. Not only does the complaint in Forgue's Case fail to involve a *Monell* claim or any claim similar to the claims alleged by plaintiffs herein (Forgue actually alleges his situation is a "class of one," meaning nobody similarly situated to him was subject to the same type of alleged retribution), but Forgue's testimony is known and it is clear he has no relevance to the present case. He should be barred as a witness in this matter.

WHEREFORE, Defendant, City of Chicago, respectfully requests that this Court enter an order barring Ronald Forgue as a witness in this matter, and for any other relief this Court deems just and proper.

Respectfully submitted,

By: s/ Harry N. Arger
One of the Attorneys for Defendant,
CITY OF CHICAGO

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CERTIFICATE OF SERVICE

Harry N. Arger, one of the attorneys for Defendant, City of Chicago, states that on **January 20, 2016**, he caused the foregoing **Motion** to be filed with the Clerk of the United States District Court, via the CM/ECF System, which will send electronic notification to all counsel of record at their e-mail addresses on file with the Court.

By: s/Harry N. Arger